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October 14, 2015

VIA CM/ECF FILING

Honorable Michael A. Shipp
United States District Court for the
District of New Jersey
Clarkson S. Fisher Building
402 E. State Street, Room 7W
Trenton, New Jersey 08608

**Re: *In re New Jersey Tax Sale Certificates Antitrust Litigation,*
No. 3:12-CV-01893-MAS-TJB**

Dear Judge Shipp:

Lum, Drasco & Positan, LLC, along with MoloLamken LLP and GeyerGorey LLP, represents objectors Arlene Davies, Todd Zahn, and Laura Zahn (“Objectors”). We write in response to the October 8, 2015 letter submitted by Interim Liaison Counsel Lite DePalma Greenberg, LLC. See Dkt. No. 422 (“Greenberg Letter”) (Oct. 8, 2015).

The Greenberg Letter reports that the jury in *United States v. Wolfson*, Criminal Action No. 13-0748 (SDW), found one defendant guilty and four defendants not guilty of fixing municipal tax lien auctions in New Jersey. The defendant that was found guilty, James Jeffers, Jr., worked for Crusader Servicing Corp. (“Crusader”). Crusader is a defendant in this action. Dkt. No. 319-1 at 1 (Dec. 23, 2013). Robert Jeffrey, who also worked for Crusader, was found not guilty.

The other defendants in the criminal action were Joseph Wolfson; Betty Simon, Trustee, LLC; and Richard Simon, Trustee (collectively, the “Wolfson Defendants”). The Wolfson Defendants are also defendants in this action. Dkt. No. 113 at 32-34 (Dec. 21, 2012) (“Complaint”). They were found not guilty.

The pending motion in this action for preliminary approval concerns settlements with not only the Wolfson Defendants, but also with six other groups of Defendants: the Crestar Defendants, the Mooring

LUM, DRASCO & POSITAN LLC

October 14, 2015

Page 2

Defendants, Michael Mastellone, the Del Vecchio Defendants, the BankAtlantic Defendants, and the PAM Defendants (collectively, the “Recent Settling Defendants”). *See* Dkt. No. 399 (Mar. 27, 2015). This Court previously granted preliminary approval to a settlement concerning the Crusader Defendants. *See* Dkt. No. 376 (Oct. 31, 2014).

Contrary to Liaison Counsel’s argument in the Greenberg Letter, the criminal verdict does not justify granting the pending motion to preliminarily approve the settlements with the Recent Settling Defendants.

First, the recent acquittals of the four defendants do not establish a lack of conspiracy. Of course, the criminal charges require a higher burden of proof. Moreover, 15 defendants have pled guilty.¹ The acquittal of the Wolfson Defendants has *no* impact on the cases against defendants that have already pled guilty to fixing tax lien auctions. Two of the Recently Settling Defendants – Michael Mastellone and Robert Del Vecchio – already pled guilty. Dkt. 320 ¶¶36, 50 (Jan. 6, 2014). David Butler and David Farber, respectively the CEO and President of Crestar Capital, LLC, from November 2008 to July 2009, also already pled guilty. *Id.* at ¶34.

Moreover, the trial evidence confirms that the settlements with the Recently Settling Defendants are inadequate. Mr. Farber testified that Crestar (then called CCTS Capital, LLC) was backed by \$50 million of capital. Test. of David Farber (9/18), 11 at 10-14. The company invested in nothing but tax liens. *Id.*, 11 at 17-19. Clearly, Crestar bought millions of dollars in tax liens. Yet, the proposed settlement with Crestar is only \$80,000. Dkt. No. 399 at 6.

The trial evidence also suggests that the settlement with Mr. Wolfson and the two entities on whose behalf he purchased tax liens, the Simon trustees, is inadequate.² Witnesses identified the Wolfson Defendants as “right below the large banks and large investors” and “some of those bidders that got to pick first” because “[t]hey had the most money and could dictate what happened at a sale.” Test. of David Hasson (9/25), 156 at 21-22; Test. of David Farber (9/18), 40 at 22-25, 41 at 1-3. One of the top three purchasers of liens in New Jersey during the class period, M.D. Sass, was purchasing \$75-100 million per year in liens. Test. of Steven Hruby (9/24), 63 at 13-14, 65 at 13-21. If the Wolfson Defendants were indeed “right below” these large investors, then they were purchasing tens of millions of dollars in liens per year. If these liens were held on average for a single year at an 18% mark-up over the competitive price, *see* Dkt. No. 402 at 8-9 (Objectors’ Opposition), the portion of damages attributed to Mr. Wolfson and the Simon Trustees over the 11-year class period could be in the tens of millions of dollars. Yet, the settlement covering Mr. Wolfson and the Simon Trustees is only for \$125,000.

Moreover, discovery – which has yet to occur in this case – could provide additional evidence of liability and the scope of the Wolfson Defendants’ conspiracy.

¹ Defendants in this civil class action who have pled guilty are: William A. Collins; Isadore H. May; Richard J. Pisciotta, Jr.; David M. Farber; Robert W. Stein; Robert E. Rothman; Steven H. Hruby; David Butler; DSBD, LLC; Crusader Servicing Corp.; Mercer, S.M.E., Inc.; Michael Mastellone; Robert U. Del Vecchio; Norman T. Remick; and Vinaya K. Jessani.

² All cited testimony is included in Exhibit A, attached.

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For these reasons as well as those in Objectors' opposition, this Court should deny preliminary approval. We appreciate the Court's consideration of this letter and the opposition brief.

Respectfully submitted,

/s/ Dennis J. Drasco
DENNIS J. DRASCO
A Member of the Firm

cc: All counsel of record

EXHIBIT A

Excerpts from Trial Transcript

United States v. Wolfson
Criminal Action 13-0748 (D.N.J.)

September 18 2015
September 24, 2015
September 25, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL ACTION 2:13-cr-748-SDW

3 UNITED STATES OF AMERICA, : TRANSCRIPT OF PROCEEDINGS
4 :
5 : T R I A L
6 -VS- :
7 JOSEPH WOLFSON, GREGG GEHRING, : Pages 1 - 236
JAMES JEFFERS, JR., ROBERT :
JEFFREY, BETTY SIMON TRUSTEE :
LLC, RICHARD SIMONE TRUSTEE, : Newark, New Jersey
8 Defendants. : September 18, 2015

A P P E A R A N C E S:

13 DEPARTMENT OF JUSTICE
BY: STEVEN TUGANDER, ESQ.
GRACE PYUN, ESQ.
14 BRYAN BUGHMAN, ESQ.
STEPHANIE ANNE RANEY, ESQ.
15 Attorneys for the Government

16 JACOBS & BARBONE
17 BY: EDWIN JOSEPH JACOBS, JR., ESQ.
MICHAEL F. MYERS, ESQ.
18 Attorneys for the Defendant Wolfson, Betty Simon Trustee
and Richard Simon Trustee

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

22 S/Carmen Liloia
23 CARMEN LILOIA
Official Court Reporter
24 (973) 477-9704

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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DAVID FARBER

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By Mr. Bughman	5	175
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By Mr. Jacobs	66
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By Mr. Olejar	167
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184

By Mr. Carlucci	171
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JESSICA WEISMAN

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By Mr. Tugander	186
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Farber-direct

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1 A Yes, we each funded it with \$25,000.

2 Q Twenty-five thousand?

3 A Yes.

4 Q Okay. And during what period, did you bid for this club?

5 A The club was in existence bidding active from 2002 through
6 July, 2005.

7 Q Okay. And during the period that you bid for this club,
8 where in the state of New Jersey did you attend auctions?

9 A We primarily bid Camden County and the upper part of the
10 Gloucester County.

11 Q Okay. And after you bid for the club, where did you go
12 next?

13 A That club, we ended up each putting up another \$75,000. We
14 borrowed 600,000 from one of the investors, and then in August,
15 2005, we started a company called CCTS Tax Liens One, where we
16 went out and we raised about 2.8 million dollars, friends and
17 families.

18 Q Okay. And what is CCTS stand for?

19 A It stood for Camden County Tax Sales.

20 Q Okay. And so what was the period that you bid for, CCTS
21 One?

22 A August, 2005 to the end of July, 2008.

23 Q Okay. And what happened in 2008?

24 A In 2008, a few months earlier that we knew that the
25 investment period was coming to an end, we were trying to find

1 a large finance partner to grow the company, or to start
2 another one.

3 Q And did you form a new company in that period of time?

4 A Yes. Between -- well, we were doing that between August,
5 2008 and November, 2008, we created CCTS Tax Liens Two.

6 Q And how long did they purchase auctions -- or purchase
7 liens?

8 A They stopped the week before Thanksgiving of 2008.

9 Q Okay.

10 And so after they stopped, where did you bid?

11 A We created -- we formed a partnership with a wealthy
12 individual from Cherry Hill who invested 10 million dollars.
13 We had a bank line of credit for 40 million and we created a
14 company called CCTS Capital.

15 Q Okay. And how long did you bid for them?

16 A I was terminated in July, 2009.

17 Q Okay. Now, did any of these companies, these CCTS
18 companies, did they invest in anything other than tax liens?

19 A No.

20 Q Okay. Now, let's take the companies one at a time, okay?
21 And I'd like to start with CCTS One, and you testified that
22 they were in existence between 2005 and 2008. Is that right?

23 A Yes.

24 Q Okay. So focusing on CCTS One. What was your role with
25 them?

1 A I was the managing partner and I did the primarily most of
2 the bidding.

3 Q Okay.

4 Were there any other employees?

5 A It was run inside another business that I had, so we had a
6 secretary that put a few hours a week into it.

7 Q Okay.

8 A But most of the work was done by myself.

9 Q Small business?

10 A Small business.

11 Q And did you also have an ownership interest in CCTS One or
12 any of its affiliated companies?

13 A Yes, I had 40 percent of CCTS One.

14 Q Okay. And where was CCTS One located?

15 A Barrington, New Jersey.

16 Q And where did they purchase tax liens?

17 A Primarily below exit 7A, 195, so the bottom part of the
18 state.

19 Q Now, Mr. Farber, how did CCTS One get its funding?

20 A We went out to friends and family. We raised 2.8 million
21 dollars and then we were able to secure a bank line of credit
22 from Roma Bank based in Robbinsville, New Jersey.

23 Q And a line of credit is that like a loan?

24 A Yes.

25 Q And did you have a bank account for this funding?

1 Q Now, Mr. Farber, can you please tell the jury in your own
2 words what you did to cause you to plead guilty.

3 A I received a subpoena from your office in May of 2009. We
4 reached out to legal counsel. We complied with that. We had
5 interviews with your office. And we realized that we violated
6 the law and we admitted to what we do was wrong.

7 Q And what specifically did you do when you realized you
8 violated the law, what specifically did you do?

9 A I pled guilty.

10 Q And what was it that caused you to violate the law?

11 A Picking the liens. Predetermining an auction before it
12 happened.

13 Q Now, you've mentioned that you met with attorneys for the
14 Government?

15 A Yes.

16 Q Approximately how many times?

17 A Through what time period?

18 Q Through the time period that you began cooperating.

19 A Till today?

20 Q Till today.

21 A Seven or eight times.

22 Q And during these meetings, what did you do?

23 A I reviewed bid books. I reviewed the industry. I spoke
24 about individuals that picked and how -- what kind of behavior
25 that happened.

1 Q And, Mr. Farber, did you make any recordings as part of
2 your cooperation?

3 A I did. I recorded a sale in Woodbridge, New Jersey.

4 Q Just one?

5 A Just one.

6 Q And Mr. Farber, had you been sentenced?

7 A I have not.

8 Q And do you know what your sentence will be?

9 A I do not.

10 Q And do you know who decides your sentence?

11 A I do.

12 Q Who's that?

13 A The Judge.

14 Q Mr. Farber, do you hope to receive a reduced sentence
15 because you're testifying today?

16 A Yes. But not because of my testimony today, because of all
17 of my cooperation with the Government.

18 Q Now, Mr. Farber, let's go back to those instances where you
19 picked liens at auctions in New Jersey. Okay? Did certain
20 bidders generally get to pick first?

21 A Yes, the large institutional buyers picked first.

22 Q Can you again tell us who some of those bidders that got to
23 pick first?

24 A Mr. Wolfson, Mr. Jeffers from Crusader, M.D. Sass, American
25 Tax Funding, Mooring.

1 Q And why is it that they got to pick first?

2 A They had the most money and could dictate what happened at
3 a sale.

4 Q And did these larger companies generally take larger liens?

5 A Yes.

6 Q And were those also often the better liens at the sale?

7 A Yes.

8 Q Mr. Farber, how did you learn what they picked, the bigger
9 companies?

10 A Mr. Collins, who was a member of our group, would approach
11 a member of the large group, traditionally either Mr. Jeffers
12 or Mr. Hassen, and ask them what liens they wanted, and if they
13 were willing to work out the sale in advance.

14 Q And would they in fact tell Mr. Collins what liens --

15 A Yes.

16 Q -- they wanted? And how would they get conveyed to you?

17 A The smaller group would huddle with Mr. Collins. He would
18 tell us what the large companies picked. As a group, we would
19 determine if there was enough left for the smaller companies
20 that were present. If there was, we would each pick normally
21 by picking cards. Mr. Collins normally had a deck of cards.
22 And then Mr. Collins would go back to either Mr. Jeffers or Mr.
23 Hassen and tell them what we picked.

24 Q Okay. Now, can you please explain the purpose of the
25 cards.

1 A It was to decide which order the breakfast club that we
2 picked our lien.

3 Q And how would the cards determine that?

4 A Ace was high and two was low. So if I pulled the ace and
5 there were four members of the breakfast club, I got the first
6 pick out of that group.

7 Q Mr. Farber, did you do anything to keep track of the liens
8 that everybody picked?

9 A Yes. I would write them down in my bid book.

10 Q You would write them down?

11 A Yes.

12 Q And why did you need to do this?

13 A So I wouldn't bid during the sale on a lien that was
14 already chosen by somebody.

15 Q Okay. And did you have a particular system for how you
16 took down notes of what everybody picked?

17 A I did.

18 Q And can you please describe that system?

19 A Yeah, the property location, area of my bid book, which was
20 left center of the bid sheets, I would write down whatever
21 everybody's picks were.

22 Q And can you tell from looking at your bid books whether you
23 picked liens at particular sales?

24 A I did, yes.

25 Q How can you be so sure?

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CRIMINAL ACTION 2:13-cr-748-SDW

4 UNITED STATES OF AMERICA, : TRANSCRIPT OF PROCEEDINGS
5 : :
6 : : TRIAL
7 -VS- : :
8 JOSEPH WOLFSON, GREGG GEHRING, : Pages 1 - 160
9 JAMES JEFFERS, JR., ROBERT :
10 JEFFREY, BETTY SIMON TRUSTEE :
11 LLC, RICHARD SIMONE TRUSTEE, : Newark, New Jersey
12 : September 24, 2015
13 : Defendants.
14 : :
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16 B E F O R E: HONORABLE SUSAN D. WIGENTON,
17 UNITED STATES DISTRICT JUDGE
18 And a Jury

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WITNESSES DIRECT CROSS REDIRECT RECROSS

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For the Government

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JESSICA WEISMAN

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By Mr. Tugander

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By Mr. Jacobs

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By Mr. Carlucci

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STEVEN HRUBY

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By Mr. Bughman

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By Mr. Carlucci

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By Mr. Olejar

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By Mr. Jacobs

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ROBERT ROTHMAN

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By Ms. Raney

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By Mr. Carlucci

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1 A Tax lien business.

2 Q Do you recall when you first met Mr. Wolfson?

3 A Mid nineties.

4 Q Do you know who he works for?

5 A Betty Simon Trust and Richard Simon Trust.

6 Q And do you know what his role was with Betty Simon Trust
7 and Richard Simon Trust?

8 A I'm not sure. They had other investments, but I think he
9 was in charge of the entire tax lien business.

10 Q Mr. Hruby, let's go back to when you started in this
11 industry. When you first attended tax lien auctions in New
12 Jersey, who did you bid for?

13 A Breen, B-R-E-E-N.

14 Q And can you tell us what years did you work at Breen?

15 A I started in 1993, and left at the end of 2002.

16 Q What was your role with them?

17 A I started as a bidder and worked my way of to Director of
18 Acquisitions.

19 Q And what does that mean, Director of Acquisitions?

20 A I was in charge of scheduling all the action auctions,
21 hiring the bidders, scheduling the bidders, training the
22 bidders. Also sales myself, keeping track of what we
23 purchased.

24 Q And what type of business was Breen?

25 A Strictly tax liens.

1 Q Purchase anything-- do they invest in anything other than
2 tax liens?

3 A No.

4 Q And did they invest in tax liens outside of the State of
5 New Jersey?

6 A Yes.

7 Q Can you tell us some of the places where they invested
8 outside New Jersey?

9 A Florida, Illinois, Indiana, South Carolina, probably 25
10 states.

11 Q Okay. And after Breen, where did you work after Breen?

12 A I went to M.D. Sass in Manhattan.

13 Q And for what years did you work for M.D. Sass?

14 A Started the end of the 2002, through 2009.

15 Q Now, Mr. Hruby, what type of business is M.D. Sass?

16 A They're a large investment firm.

17 Q Did they offer other investments besides tax liens?

18 A Yes.

19 Q What was the size of their tax lien portfolio relative to
20 the other investments that they offered?

21 A Taxing portfolio, maybe 200 million dollars, but that was
22 very small compared to the rest of the firm.

23 Q And, Mr. Hruby, how did M.D. Sass get money to invest in
24 tax liens?

25 A They raised money from outside institutions and wealthy

1 investors, and then they used that money to buy tax liens and
2 then with those tax liens, they leveraged, they borrowed money
3 using their tax liens as collateral.

4 Q Did M.D. Sass bid in states other than New Jersey?

5 A Yes.

6 Q Could you name a few?

7 A Illinois, Indiana, Florida, South Carolina, Arizona.

8 Q Now, Mr. Hruby, was M.D. Sass already in the tax lien
9 industry in New Jersey when you joined them in 2002?

10 A Yes.

11 Q Do you know approximately when they started investing in
12 New Jersey?

13 A Maybe 1994, '95.

14 Q Did you see bidders from M.D. Sass at auctions in New
15 Jersey while you were employed at Breen?

16 A Yes. Um -- yes.

17 Q Mr. Hruby, what was your title while you were with M.D.
18 Sass?

19 A I was Director of Acquisitions and then promoted to Vice
20 President and Director of Acquisitions.

21 Q And can you please tell us what some of your
22 responsibilities were.

23 A At Breen, I hired the bidders, trained the bidders,
24 scheduled the auctions, decided what auctions we're going to.
25 I was in charge of all the due diligence, which is the property

1 research, deciding which liens we're going to buy.

2 Q While at M.D. Sass, who did you report to?

3 A Vinay Jessani.

4 Q What was his role?

5 A Portfolio manager.

6 Q And can you just tell us what that means?

7 A He was in charge of the tax lien department.

8 Q And while at Sass, did anyone report to you?

9 A Yes, all my bidders.

10 Q Can you approximate how many bidders reported to you?

11 A At one given time, probably 15. But over the course of my
12 time there, I probably had 40 bidders, 50 bidders.

13 Q Now, during your time at M.D. Sass, could you estimate the
14 average yearly investment that M.D. Sass made in New Jersey for
15 tax liens?

16 A Seventy-five to a hundred million dollars.

17 Q How does that compare to others in the industry during that
18 time?

19 A It's in the top two or three.

20 Q How do you know that?

21 A Just from experience.

22 Q Did that mean that M.D. Sass could be more competitive than
23 other bidders at auctions?

24 A Yes.

25 Q Now, Mr. Hruby, are you testifying today that you have a

1 plea agreement with the Government?

2 A Yes.

3 Q And as part of that plea agreement, did you plead guilty to
4 a felony?

5 A I did.

6 Q Approximately when did you plead guilty?

7 A 2011, '12 -- 2012.

8 Q And when you entered into this plea agreement with the
9 Government, did you have an attorney represent you?

10 A I did.

11 Q Do you still have an attorney representing you?

12 A Yes.

13 Q Do you know what the maximum penalty you face is?

14 A Yes, a million dollar fine and approximately ten years in
15 jail.

16 Q Mr. Hruby, can you please tell the jury in your own words
17 what you did to cause you to plead guilty to this crime.

18 A I was involved with bid rigging in the State of New Jersey
19 for 15 years.

20 Q Mr. Hruby, have you met with attorneys for the Government?

21 A Yes.

22 Q Can you approximate how many times you met with attorneys
23 from the Government?

24 A Six or eight.

25 Q And what did you do during these meetings?

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WITNESSES DIRECT CROSS REDIRECT RECROSS

3

For the Government

4

ROBERT ROTHMAN

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By Mr. Carlucci	5	65
By Mr. Jacobs	28	67
By Mr. Olejar	52	67
By Ms. Raney		57

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ROBERT STEIN

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By Mr. Bughnin	69
By Mr. Jacobs	98
By Mr. Carlucci	132
By Mr. Olejar	145

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DAVID HASSON

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By Ms. Raney	147
By Mr. Jacobs	181
By Mr. Olejar	204
By Mr. Carlucci	207

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1 A At a tax sale, although we could have met -- he's from the
2 same area as me. Our first real friendship evolved from tax
3 sales.

4 Q Do you know who you were bidding for at the time?

5 A He was bidding for Crusader Bank.

6 Q Who were you bidding for?

7 A I was bidding, I believe I was bidding for Sass at that
8 time. It could have been the end years of Breen, though, but
9 I'm not positive about that.

10 Q Did you see Mr. Jeffers in any particular geographic area?

11 A Yes.

12 Q Where was that?

13 A Jim would typically bid in the southern portion of the
14 state or as we call it, Trenton south, all the way to Cape May.

15 Q Now, I'd like to focus your attention on a time period
16 between 1998 and 2009. During those years you were bidding for
17 Breen and then M.D. Sass. Do I have that right?

18 A Correct.

19 Q And you testified that you went to over one hundred
20 auctions per year with both companies; is that correct?

21 A Yes.

22 Q Now, were there different types of investors at these
23 auctions?

24 A Yes, there were.

25 Q And how would you characterize or describe those different

1 types?

2 A Well, there were several banks, several investment
3 companies that borrowed money from banks to bid. There were
4 several independent type of investors. It's pretty much the
5 mix of what they were.

6 Q And what kind of investor was M.D. Sass?

7 A M.D. Sass was a larger, multi-faceted investor.

8 Q And what kind of investor was Crusader?

9 A Crusader was a bank that I presume had a tax lien
10 portfolio.

11 Q Did you always see Crusader at auctions?

12 A Just about every auction I went to I saw Crusader, yes.

13 Q And who were some of the other large institutional
14 investors that you saw?

15 A Well, there was Fidelity, Bank Atlantic, Mooring Tax Asset
16 Group, Crusader, Plymouth Financing, JP Morgan Chase, Life
17 Center Academy, PAM Investors, J&H, Staples Investors. There
18 were a slew of investors and then small independent investors.

19 Q Where did Mr. Wolfson and Simon Trust fit into the scheme
20 of things?

21 A I would say he was right below the large banks and large
22 investors. I would consider him right below that, but above a
23 lot of the small independent investors.

24 Q Let's talk about the small independent investors that you
25 mentioned. Who were they?

1 A Bill Collins, Norm Remnick, Joe Hofmann, Rich Pisciotta,
2 Charles Graziano, just several. I mean, there were actually
3 hundreds, I guess.

4 Q Okay. Now, in general, how did you prepare for auctions
5 before you would attend one in advance, how would you prepare?

6 A I would receive a bid book that was prepared by whatever
7 company I was working for. And I would go to the tax sale an
8 hour in advance of the scheduled sale. And I would get an
9 updated tax list from the tax collector. And I would mark on
10 my bid sheet what was available to be bid at the sale because
11 several items could have come off because the property owner
12 paid their taxes before the sale.

13 Q How did you receive the bid book that you just mentioned?

14 A At sometimes it was Fed Exed to me and on most occasions,
15 the bid books were given to me from -- we're talking about the
16 period from '98 through 2009; correct?

17 Q Yes.

18 A They were Fed Exed or given to me by Steven Hruby.

19 Q And when you were at Sass, which I believe you said was
20 located in New York City, if they were Fed Exed to you, were
21 they Fed Exed from New York to you in New Jersey?

22 A Yes, they would have been Fed Exed from the office in New
23 Jersey to me. But Steve Hruby would give me my bid books, he
24 lived close by.

25 Q What information generally is contained in a bid book?